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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68051; File No. SR-BX-2012-067)

October 12, 2012

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify BX's Fee Schedule Governing Order Execution and Routing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2012, NASDAQ OMX BX, Inc. ("BX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BX proposes to modify BX's fee schedule governing order execution and routing. BX will implement the proposed change on October 1, 2012. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is amending its fee schedule governing order execution and routing. The general purposes of the fee changes are to (i) encourage greater provision of liquidity through BX by expanding BX's Qualified Liquidity Provider program, and (ii) increase fees for routing orders to the New York Stock Exchange ("NYSE") to reflect announced price increases by that exchange.<sup>3</sup> All of the changes pertain to securities priced at \$1 or more per share.

First, BX is expanding its Qualified Liquidity Provider program. Under the program, a qualifying member is eligible to pay a reduced fee for liquidity-providing orders (\$0.0015 per share executed versus the usual fee of \$0.0018 per share executed) entered through an eligible market participant identifier ("MPID"). Currently, a Qualified Liquidity Provider must have (i) shares of liquidity provided and (ii) total shares of liquidity accessed and provided in all securities through one or more of its NASDAQ OMX BX Equities System MPIDs that represent more than 0.40% and 0.50%, respectively, of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities ("Consolidated Volume") during the month. If a member satisfies these criteria, it is then eligible to pay the reduced fee for liquidity-providing orders entered through a "Qualified MPID." A Qualified MPID is an MPID of a Qualified Liquidity Provider through which, for at least 150 securities, it quotes at the national best bid or offer ("NBBO") an average of at least 25% of the time during regular market hours (9:30 a.m. through 4:00 p.m.) during the month.

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<sup>3</sup> See SR-NYSE-2012-50 (September 26, 2012).

Under the proposed change, BX will add an additional means of becoming a Qualified Liquidity Provider. Specifically, a Qualified Liquidity Provider may also be a member with (i) shares of liquidity provided and (ii) total shares of liquidity accessed and provided in all securities through one or more of its NASDAQ OMX BX Equities System MPIDs that represent more than 0.35% and 0.45%, respectively, of Consolidated Volume during the month. For a member qualifying under this method, a Qualified MPID is an MPID through which, for at least 400 securities, the member quotes at the NBBO an average of at least 25% of the time during regular market hours during the month. The change is designed to encourage more members to become active liquidity providers in a wider range of securities, thereby enhancing the number of stock [sic] in which BX is able to provide liquidity at the NBBO and the depth of such liquidity.

Second, to reflect recent increases in the fees charged by NYSE with respect to orders routed to it by BX, BX is raising the fee for BSTG, BSCN, and BTFY orders routed to NYSE from \$0.0023 per share executed to \$0.0025 per share executed; and the fee for BMOP orders routed to NYSE from \$0.0025 per share executed to \$0.0027 per share executed.

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(4) and (5) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All

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<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4) and (5).

similarly situated members are subject to the same fee structure, and access to BX is offered on fair and non-discriminatory terms.

BX believes that the proposed expansion of the Qualified Liquidity Provider program is reasonable because it will enable fee reductions for members that opt to provide and add liquidity and maintain quotes at the NBBO to the extent required by either of the two tiers established under the program. The proposed change is consistent with an equitable allocation of fees because it uses pricing incentives in order encourage [sic] usage of the market and the quoting of a range of securities at the NBBO for a significant portion of the trading day, activities that benefit both the exchange and its other market participants. Finally, the proposed change is not unfairly discriminatory because the offered pricing reduction does not result in an excessive deviation from the otherwise prevailing charge to access liquidity, and because the change has the potential to benefit other market participants by enhancing market quality.

The change to routing fees is reasonable because the proposed fees for routing orders to NYSE reflect the increase in the fee that will be charged by NYSE to BX with respect to such orders. The change is consistent with an equitable allocation of fees because it will bring the economic attributes of routing orders to NYSE in line with the cost of executing orders there. Finally, the change is not unfairly discriminatory because it solely applies to members that opt to route orders to NYSE.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. BX believes that the proposed

rule change reflects this competitive environment because it is designed to use pricing incentives to attract liquidity at the NBBO to BX, and to ensure that the charges for use of the BX routing facility to route to NYSE reflect an increase in the cost of such routing.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor BX's execution and routing services if they believe that alternatives offer them better value. The proposed change is designed to enhance competition by using pricing incentives to encourage greater use of BX's trading services. The proposed change is also designed to ensure that the charges for use of the BX routing facility to route to NYSE reflect an increase in the cost of such routing, thereby ensuring that BX does not incur a loss when routing to NYSE.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>6</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2012-067 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2012-067. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also

will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2012-067, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).